



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## 2012 Solid Waste Financial Assurance

LSA Document #11-454

[www.idem.IN.gov](http://www.idem.IN.gov)*Mitchell E. Daniels, Jr.***Governor***Thomas W. Easterly***Commissioner**

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**Description**

Amends 329 IAC 10 to make changes to the financial assurance rules for solid waste land disposal facilities.

**Citations Affected**

329 IAC 10-12-2; 329 IAC 10-39; 329 IAC 11-16-1.

**Affected Persons**

Current and future permitted municipal solid waste land disposal facilities and restricted waste sites disposal facilities.

**Reason(s) for the Rule**

IDEM proposes to amend current language in the solid waste financial assurance rule. The intent of the proposed rule changes is to:

- 1) Update the existing rule at 329 IAC 10-39 so that it is consistent with EPA Financial Assurance rule at 40 CFR 258 Subpart G;
- 2) Make the financial assurance mechanism language more consistent with the financial assurance mechanism in Indiana's hazardous waste financial assurance rule;
- 3) Assess more accurately the ability of the permittee to meet the future cost of closure and post-closure for the solid waste disposal facility by requiring restricted waste site and local government permittees that use the financial test for financial assurance to meet both the financial test ratios and the acceptable bond rating.

**Economic Impact of the Rule**

The estimated cost of this rule could range from a few thousand dollars to a few hundred thousands of dollars, depending upon how many users of the financial test for solid waste disposal facilities financial assurance can comply with the additional requirements of the financial test. If a permittee no longer can comply with the financial test, the permittee will be required to obtain an alternative financial assurance mechanism, which can cost each permittee tens of thousands of dollars.

**Benefits of the Rule**

The rule changes will update the existing rule language so that it is consistent with EPA financial assurance regulations and Indiana's hazardous waste financial assurance mechanisms. In addition, the additional requirement at 329 IAC 10-39-2(a)(5) for the financial test mechanism for solid waste landfills financial assurance will assess more accurately the ability of financial test users to cover the future cost of closure and post-closure. Therefore, IDEM will not be left with the financial burden of closure and post-closure of private and municipal solid waste disposal facilities.

**Description of the Rulemaking Project**

This rule makes changes to the rules for solid waste disposal facilities financial assurance in 329 IAC 10 by:

- 1) Exempting solid waste disposal facilities operated by state and federal government from financial assurance requirements at 329 IAC 10-39-1(f);
- 2) Adding a requirement for the restricted waste sites financial test at 329 IAC 10-39-2(a)(5) and local government financial test at 329 IAC 10-39-2(a)(6)(B)(i)(AA) to meet both the financial test ratios and the acceptable bond rating to pass the financial test. Utilities regulated by the Indiana Utility Regulatory Commission will be exempt from this change;
- 3) Adding financial information requests 329 IAC 10-39-2(a)(5)(G) and 329 IAC 10-39-2(a)(6)(B)(i)(EE) for permittees using the financial test if the bond rating of the permittee is rated at BBB-(Standard and Poor's) or Baa3(Moody's). The commissioner may request this information at the commissioner's discretion, so the changes are not requirements.
- 4) Adding a requirement at 329 IAC 10-39-3(c) for permittees of solid waste disposal facilities to update annually the cost of post-closure for inflation during the post-closure period;
- 5) Adding sections 329 IAC 10-39-12 through 329 IAC 10-39-18 that include wording for the financial assurance instruments by using language from the federal solid waste and Indiana hazardous waste financial assurance rules; and
- 6) Correcting references to Indiana Code citations in 329 IAC 10-12-2.

#### **Public Notices**

First Notice of Comment Period: August 17, 2011, Indiana Register (DIN: 20110817-IR-329110454FNA).

Second Notice of Comment Period: April 11, 2012, Indiana Register (DIN: 20120411-IR-329110454SNA).

Notice of Public Hearing: April 11, 2012, Indiana Register (DIN: 20120411-IR-329110454PHA).

Change in Notice of Public Hearing: July 11, 2012, Indiana Register (DIN: 20120711-IR-329110454CHA).

#### **Scheduled Hearings**

September 18, 2012, 1:30 p.m., Indiana Government Center South, 302 West Washington Street, Conference Center Room A, Indianapolis, Indiana.

#### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

#### **Consistency with Federal Requirements**

This rule is consistent with the federal regulations for federal solid waste facilities financial assurance at 40 CFR 258 Subpart G.

#### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

**Additional Information**

Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).